

Contractor No.: M01310
Vendor No.: 54457

MEMORANDUM OF UNDERSTANDING
NM502 RECONSTRUCTION PROJECT

This Memorandum of Understanding ("MOU") is between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** ("Department"), and the **INCORPORATED COUNTY OF LOS ALAMOS**, ("County"). This MOU is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, the Department is planning a highway project within the boundaries of the County, identified as the NM502 Knecht Road to Tewa Loop Reconstruction, Project Number 5100650, CN 5100650, ("Project"); and,

Whereas, the County is working with a regional supermarket chain to redevelop the Trinity Site shopping center at NM502 and Knecht Road, which will require road improvements; and,

Whereas, the Department and the County want to work together to plan, schedule and finance the Project, which will assist in relieving traffic congestion and promote traffic safety.

Now therefore, pursuant to NMSA 1978, Section 67-3-28, the parties agree as follows:

1. Purpose.

The purpose of this MOU is to define the Department's and the County's commitment to coordinate Project funding, development and execution. The parties intend to enter into agreements as necessary to address various issues, which include but are not limited to finance, right of way, utilities, design, scheduling, construction and maintenance. This Project is funded by the Federal Highway Administration (FHWA), the State Road Fund and local/private funds.

2. The Department Shall:

- a. Designate a project development engineer to oversee the design of the Department's portion of the Project.
- b. Review design alternatives and provide a final design, which may include but is not limited to: road widening; a roundabout at Central Avenue and NM502; intersection alignment improvements at DP Road, Canyon Road and Arroyo Lane; installation of pedestrian signals on NM502 between Canyon Road and Tewa Loop.
- c. Provide approximately \$3.5 million in funding for the Project, which is a combination of FHWA funds and State Road Funds.

3. The County Shall:

- a. Designate a project manager who will oversee the design of the County's portion of the Project.
- b. Be responsible for and provide funding of approximately \$1,514,528 to fund the following portions of the Project:
 1. The design and construction of the storm water drainage system from the west side of the Knecht Road/NM502 intersection to DP Road.
 2. The realignment of DP Rd. and NM 502 in coordination with the Trinity Site Development.
 3. Contribute \$100,000 to the Department for design and construction of enhanced landscaping and other related project items related to NM 502 and be responsible to maintain the landscaping related to the NM 502 project within both state and county rights of way.
- c. At completion of the Project, assume operation and maintenance responsibilities of the landscaping, drainage, traffic signals and signs, and roadway lighting.

4. The Parties Agree:

- a. To cooperate in the design of the Project and provide thorough and timely review and input of all Project-related documents of either party. The parties will have a minimum of two weeks to review and comment on draft submittals.
- b. Provide the necessary plans, designs, estimates and documents for the construction of their respective portion of the Project and cause the Project to be constructed in the manner provided by law.
- c. To coordinate the County's responsibilities outlined in Section 3 of this MOU with the Department's responsibilities in Section 2 of this MOU.
- d. The Project is expected to start with the County's work on the NM502/Knecht Road intersection to the realigned NM 502/DP Road intersection. The Department will then coordinate the beginning of construction on its portion of the Project.
- e. To negotiate and enter into cooperative or memorandum of agreements as needed, which include but are not limited to finance, air space and right-of-way, underground utility agreements as well as maintenance agreements for landscaping, signal/lights and the drainage system.

5. Term.

This MOU becomes effective upon signature of all parties. The effective date is the date when the last party signed the MOU on the signature page below. This MOU and shall remain in effect for the life of the Project unless terminated pursuant to the terms and conditions of this MOU.

6. Third Party Beneficiaries.

It is not intended by any of the provisions of any part of this MOU to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the MOU to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this MOU. No person shall claim any right, title or interest under this MOU or seek to enforce this MOU as a third party beneficiary of this MOU.

7. Liability, New Mexico Tort Claims Act.

As between the Department and the County, each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this MOU. Each party shall be liable for its own actions or inactions in accordance with state law. Any liability incurred in connection with this MOU is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.* This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. No provision in this MOU modifies and/or waives any provision of the New Mexico Tort Claims Act.

7. Scope of Agreement.

This MOU incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written MOU. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this MOU.

9. Terms of this Agreement.

The performance of all duties and obligations herein shall conform with and shall not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

10. Equal Opportunity Compliance.

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this MOU. If the parties are found to not be in compliance with these requirements during the term of this MOU, the parties agree to take appropriate steps to correct these deficiencies.

11. Appropriations and Authorizations of Federal, State and Local Funds.

Construction of the Department's portion of this Project and Los Alamos' portion of this Project is contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico or the Congress of the United States, or the Incorporated County of Los Alamos. If sufficient appropriations and authorizations are not made by the County or by the Legislature or Congress to the Department, this MOU shall terminate upon written notice being given by one party to the other. Reasonable efforts shall be made to give the other party at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose. The Department and the County are expressly not committed to expenditure of any funds for this Project until such time as the funds are programmed, budgeted, encumbered, and approved for expenditure.

12. Severability.

In the event that any portion of this MOU is determined to be in conflict with any applicable statute or rule or law or are otherwise held to be void, unconstitutional or otherwise unenforceable, the remainder of this MOU shall remain in full force and effect.

13. Applicable Law.

The Laws of the State of New Mexico shall govern this MOU. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

14. Principal Contacts and Notices

The principal contacts for this MOU are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed above.

Miguel B. Gabaldon
District 5 Engineer
New Mexico Department of Transportation
7315 Cerrillos Road) Santa Fe, New Mexico 87502-4127
Office (505)955-7700
Fax: (505) 995-7971
E-mail: Miguel.Gabaldon@state.nm.us

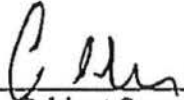
Philo Shelton
Los Alamos County Public Works Director
Incorporated County of Los Alamos
1000 Central Ave., Suite 160
Los Alamos, New Mexico 87544
Office: (505) 662-8150
Fax: (505) 662-8109
E-mail: philo.shelton@lacnm.us

15. Amendment.

This MOU shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

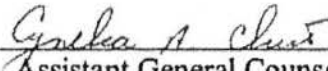
In witness whereof, each party is signing this Memorandum of Understanding on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: 
Tom Church, Cabinet Secretary

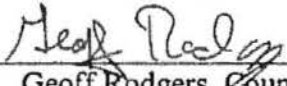
Date: 4/20/14

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: 
Assistant General Counsel

Date: 4-23-14

INCORPORATED COUNTY OF LOS ALAMOS

By: 
Geoff Rodgers, Council Chair

Date: 4-4-14

Approved as to form and legal sufficiency by the Attorney for the Incorporated County of Los Alamos

By: 
Rebecca W. Ehler, County Attorney

Date: _____

ATTEST


Sharon Stover, County Clerk

